



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-411
Regulation title	General Relief Program
Action title	Repeal General Relief Program Adult Components
Date this document prepared	August 18, 2010

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

- 1) Please explain why this is an emergency situation as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

General Relief (GR) is a program that provides assistance to individuals who are not eligible for other forms of assistance. Item 332 of the 2010 Appropriation Act (Act) states that the Department of Social Services (DSS) “shall eliminate all components of the GR Program (GRP) except for the unattached children” if there is not an extension of federal medical assistance percentage (FMAP) funds as authorized by the American Recovery and Reinvestment Act (ARRA).

Item 332 also gives the Governor sole discretionary authority to decide which programs cut by the 2010 Session of the General Assembly will be restored if the FMAP rate is extended by Congress. While the FMAP extension has been approved by Congress, it is in an amount that is less than the amount authorized by ARRA. The Governor has not, therefore, restored funding for the GRP.

This proposed regulatory action removes unfunded adult components within the GRP regulation to comply with the requirements of the Act.

The adult components include unemployed employable individuals, unemployable individuals, institutional care, ongoing medical, interim reimbursement assistance for Supplemental Security Income (SSI) applicants, food credit authorization, shelter, emergency medical, transient, burial and clothing assistance.

Item 332(2) directs DSS to enact emergency regulations to affect this change within 280 days of enactment.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary. Please include a citation to the emergency language.

Section § 63.2-217 of the Code of Virginia (Code) authorizes the State Board of Social Services (Board) to promulgate rules and regulations necessary for the operation of all assistance programs. Section 63.2-802 provides for the establishment of a GRP.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Item 332 of the Act states that DSS “shall eliminate all components of the GR Program (GRP) except for the unattached children” if there is not an extension of federal funds. While Congress extended the FMAP rate, Item 332 gave the Governor the discretionary authority to determine which funding cuts made by the 2010 Session of the General Assembly will be restored. The Governor did not restore funding for the GRP.

This proposed regulatory action removes unfunded adult components within the GRP regulation to comply with the requirements of the Act. To leave these components in regulation would be contrary to Executive Order 14 that “...only regulations that are necessary...shall be promulgated.”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Item 332 of the Act states that DSS “shall eliminate all components of the GR Program (GRP) except for the unattached children” if there is not an extension of increase in the FMAP as authorized by ARRA. The Act further states that if the FMAP funds are extended, the Governor has the authority to determine if the reduction to the GRP will be “...imposed, either partially or in full, as he deems necessary....”

While the FMAP extension has been approved by Congress, it is in an amount that is less than the amount authorized by ARRA and the Governor has not restored funding for the GRP.

The Item 332(2) states that DSS “shall have the authority to enact emergency regulations to effect this change within 280 days of enactment.” Because of the General Assembly mandate, no objection is expected.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-411-10		The current regulation makes reference to several terms which are obsolete because of the elimination of the adult components.	The terms will be updated in reference to the unattached children component only.
22 VAC 40-411-30,40,50, 60,80, 90, 100, 110, 130, 140, 150,		The current regulation makes reference to the adult components which are eliminated.	These components and terms will be eliminated.

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Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

There is no alternative to repealing the unnecessary provisions of the regulation.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, and 3) potential impacts of the regulation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1; information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to: Thomas J. Steinhauser, Director, Division of Benefit Programs, 801 E. Main Street, Richmond, Virginia 23219, tom.steinhauser@dss.virginia.gov, FAX (804) 726-7356. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public meeting will not be held pursuant to an authorization to proceed without holding a public meeting.

Participatory approach

Please indicate the extent to which an ad hoc advisory group or regulatory advisory panel will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of

the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is not using the participatory approach in the development of the proposal pursuant to an authorization to proceed without using the participatory approach.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This proposed regulatory action has no impact on the authority or rights of parents or marital commitment. Due to the fact that several components of the GRP are being discontinued, individuals and families will lose the public assistance payments they were receiving, decreasing disposable family income.